



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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**MEMORANDUM**

**TO:** The Commission

**FROM:** Lisa Stevenson  
Acting General Counsel

**BY:** Kathleen Guith *KG*  
Associate General Counsel for Enforcement

Mark Allen *MA/ep*  
Assistant General Counsel

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**SUBJECT:** MUR 6893 (Winning the Senate PAC, *et al.*)

**RE:** Circulation of Discovery Documents

On April 12, 2016, the Commission found reason to believe that Winning the Senate PAC and Jason F. Emert in his official capacity as treasurer (collectively "WTS") violated 52 U.S.C. § 30124(b) by fraudulently misrepresenting that one or more federal candidates endorsed WTS emails soliciting contributions.<sup>1</sup> The Office of General Counsel then commenced an investigation to determine the scope of the dissemination and the cost of the activity.

To date, we have engaged in informal discovery including interviews with WTS treasurer Emert and former employees of HardenGlobal, a vendor to WTS that appears to have carried out the email solicitation project.<sup>2</sup> Though we have obtained some information about the solicitations, we have not been able to obtain complete information (including copies of the actual email solicitations) through informal means. Therefore, for the reasons discussed below, we now ask that the Commission approve the issuance of the two attached subpoenas to produce documents and orders to submit written answers to questions. We are circulating the subpoenas and orders for the Commission's approval on a 48-hour no-objection basis.

<sup>1</sup> See Certification, MUR 6893 (Winning the Senate PAC, *et al.*) (Apr. 14, 2016).

<sup>2</sup> See Memo to the Commission, MUR 6893 (WTS) (Nov. 3, 2016).

1 First, we propose the attached subpoena and order to Emert in his roles as WTS treasurer  
2 and custodian of documents and more broadly as a participant in WTS's activity. Though other  
3 documents we have gathered indicate that Emert had a substantial role in the email solicitations  
4 at issue, Emert minimized the extent of his involvement in the email solicitations during our two  
5 interviews. Specifically, he asserted that he does not possess any relevant information and that  
6 he was not working for WTS at the time of its email project. The subpoena and order requests  
7 copies of the WTS emails soliciting contributions and WTS communications with federal  
8 candidates and officeholders, based on information that some may have been misled into  
9 agreeing to allow the use of their names by WTS.

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11 Second, we propose the attached subpoena and order to Surge Red, Inc. (a/k/a SurgeRed),  
12 the apparent successor entity to HardenGlobal, which closed after founder Tyler Harber's arrest.<sup>3</sup>  
13 Our interviews with Andrew Ransom, a former employee of HardenGlobal and SurgeRed, and  
14 Chris Marston, who provided compliance services to WTS, have been more helpful in learning  
15 about the email solicitation project. Neither, however, could provide us with copies of the email  
16 solicitations, and suggested that they could be located on a SurgeRed server. Marston was able  
17 to provide us with copies of communications confirming WTS's effort to obtain contributions  
18 under the names of federal candidates and officeholders. We contacted the CEO of SurgeRed,  
19 David Denehy, to request WTS's emails, but he did not respond to the letter or to follow-up  
20 phone calls.

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22 Based on the foregoing, we believe that the subpoenas and orders are necessary in order  
23 to obtain the information necessary to complete our investigation and make further  
24 recommendations to the Commission.  
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<sup>3</sup> Harber is currently serving a prison sentence for violations of the Federal Election Campaign Act of 1971, as amended, that occurred as a result of other work he did for HardenGlobal. If necessary, we will attempt to interview Harber. See Memorandum to the Commission, MUR 6893 (WTS) (Nov. 3, 2016).